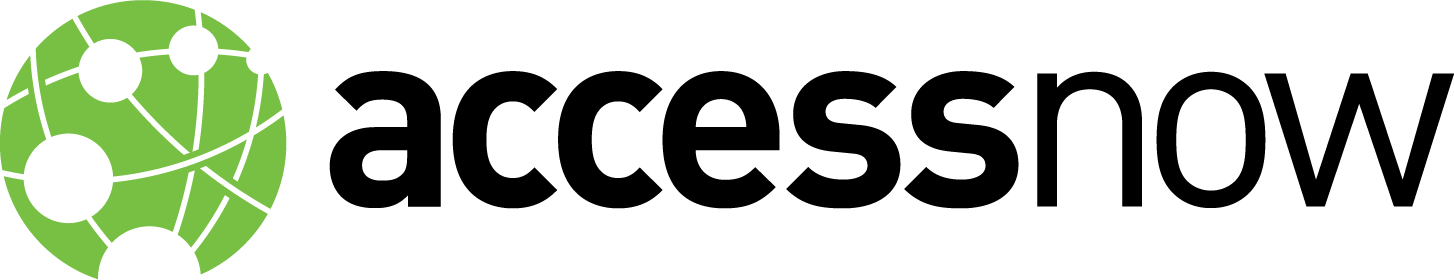
****

**United Nations Human Rights Committee**

**Call for Comments: General Comment No. 37 on Article 21 (Right of Peaceful Assembly) of the ICCPR**

21 February 2020

**Introduction**

Access Now welcomes this opportunity to provide comment on the United Nations (UN) Human Rights Committee’s (the Committee) Revised Draft General Comment No. 37 on Article 21 (Right of Peaceful Assembly) of the International Covenant on Civil and Political Rights (ICCPR) -- i.e. the Draft General Comment.[[1]](#footnote-1) In this submission, we aim to provide an individual-centric and human rights perspective informed by our work for the past ten years at the intersection of information and communications technologies (ICTs) and public policy.

**About Access Now**

Through representation in 14 countries around the world, Access Now provides thought leadership and policy recommendations to the public and private sectors to ensure the continued openness of the internet and protection of fundamental rights.[[2]](#footnote-2) We engage with an action-focused global community, convene stakeholders through the RightsCon Summit Series, subgrant funding to grassroots and frontline organizations, and operate a 24/7 Digital Security Helpline that provides real-time direct technical assistance to at-risk individuals and communities worldwide. As an ECOSOC-accredited organization, Access Now routinely engages with the United Nations in support of our mission to extend and defend the human rights of users at risk around the world.

**Summary of Recommendations**

Access Now commends the Committee on the release of its Draft General Comment. In particular, Access Now welcomes the Draft General Comments’ notable link between the reliance on digital services to exercise one’s right of peaceful assembly (particularly highlighted in§38). Access Now notes the following specific and general recommendations:

1. The Committee should make explicit reference to “internet shutdowns” in §38 of the Draft General Comment, and delete the word “unduly” in the text, “unduly blocking Internet connectivity” (at §38). Since 2011, Access Now has been identifying, documenting, and verifying internet shutdowns around the world. Internet shutdowns are on the rise. Our Shutdown Tracker Optimization Project (STOP), drawing on research by the #KeepItOn Coalition, indicates that there were more than 213 internet shutdowns reported in 2019, with 196 in 2018, 108 in 2017 and 75 in 2016. The Appendix of this document lists UN resolutions, special procedures reports, and governmental statements on the thematic issue of internet shutdowns. In the 2018 HRC resolution on peaceful protest, for example, OP9 "*Also calls upon* all States to refrain from and cease measures, when in violation of international human rights law, seeking to block Internet users from gaining access to or disseminating information online." Rather than blocking connectivity or disrupting online apps and services during demonstrations, governments should promote greater connectivity during mass gatherings, for example by boosting mobile telecommunications services.[[3]](#footnote-3)
2. Acknowledging the Committee’s recognition that “the full protection of the right of peaceful assembly depends on the protection of a range of rights” (at §111 of the Draft General Comment) Access Now recommends that the Committee further draw upon the language contained in the Committee’s General Comment No. 34 on the freedoms of opinion and expression in the following respects:
   1. Adopt language similar to §15 of the Committee’s General Comment No. 34 into the Draft General Comment particularly at §11.
   2. The Committee should supplement and strengthen the language contained in §43 of the Committee’s General Comment No. 34 with language from international experts regarding internet shutdowns and state restriction on human rights into §38 of the Draft General Comment.
   3. Finally, similar to the Committee’s previous General Comment No. 34, which integrates and links to online platforms (i.e. the internet) we encourage the Committee to further integrate the digital perspective throughout the Comment.
3. Access Now welcome’s the Committee’s notable references to the use of surveillance technology, including facial recognition technology, in the context of peaceful protests (at §11, §70, §71, and §112 of the Draft General Comment). Nonetheless, Access Now recommends the following:
   1. The Committee should, where applicable, link the use of surveillance technology to the closing of online civic space and the chilling effect posed. The closing of online civic space has impacted the right to protest, as previously decentralized and open networks, platforms, and tools have become restricted, with individuals and communities subject to censorship, harassment, surveillance, and persecution that deter the use of ICTs as tools of protest.
   2. The Committee could cite to the UN Special Rapporteurs on the right to freedom of opinion and expression, David Kaye, and the right to freedom of peaceful assembly and association, Clement Voule’s letter expressing deep concern over the proposed sale of control over the .ORG top level domain. This letter, and the proposed sale it addresses, could be cited as an example where the Draft General Comment notes that privatization should “be limited if the participants have no other reasonable way to convey their message to their target audience” (at §67).
   3. The Committee acknowledges the threats posed by the collection and processing of all sensitive, personal data, but could emphasize the specific harms stemming from collection of biometric data through facial recognition technology. Unlike other sensitive personal information like passwords or security PINs, biometric identifiers are often immutable characteristics; a person cannot change their face or earlobe shape if the data captured is abused or compromised, as they can a passphrase. The Committee rightfully notes the collection of “personal information and data of those engaged in peaceful protests [...] must strictly conform to the applicable international standards, including the right to privacy” (at §71, §72, and §112). Access Now recommends that the Committee strengthen this language with explicit reference to the collection and misuse of **biometric** data.
4. Access Now recommends that the Committee include explicit references to “social media hacking” and “attacks on encryption and anonymity” in the context of the right to peaceful assembly. Specifically we recommend:
   1. Replace the phrase “monitoring of social media to glean information about participation in peaceful assemblies” at §72 with “monitoring **or hacking (including, but not limited to, malware-based phishing attacks and** **doxxing)** social media to **gather, alter, or otherwise interfere with** information about participation in peaceful assemblies**, and disrupt online assemblies**.” The legal caveat “including, but not limited to” is essential because (1) hacking is difficult to define and (2) new forms of hacking constantly emerge.
   2. The Draft General Comment does not include any references to “attacks on encryption and anonymity.” Yet, threats and reprisals against those who exercise their rights to peaceful assembly in the digital realm often occur online or through the use and abuse of ICTs. Additionally, assemblies in the digital age can occur entirely on social platforms or in group messaging channels, which may only be safely accessible through encrypted means and under assumed names. Those exercising their right to peaceful assembly therefore rely on encrypted communications tools and workflows that protect their identities, communities, and plans. Encryption and anonymity are essential to the exercise of the exercise of this right in the digital age, and should therefore be captured in the Draft General Comment.

Access Now provides further information to support our recommendations to the Committee below.

**Specific Comments**

**1. The obligation of States parties in respect of the right of peaceful assembly**

The UN Human Rights Council has declared that the same rights that people have offline must also be protected online.[[4]](#footnote-4) Communications tools are essential to enable the safe and effective exercise of the right to protest. Digital communication services, including new technologies, must remain open and secure for all to exercise their rights to freedom of expression, association and peaceful assembly.   
  
Access Now welcomes the General Comment’s recognizing the reliance on digital services to exercise one’s right of peaceful assembly (as noted in §38 of the General Comment). Indeed, new technologies enable rights-holders to exercise human rights in the context of peaceful assembly. Rights-holders are increasingly exercising their right to freedom of assembly online through information and ICTs. Online assemblies occur on various mediums, including social media and communication apps, such as WhatsApp and Telegram. For instance, the wave of anti-government protests happening in Iraq in September and October 2019 were sparked by a call on social media in Tahrir Square, Baghdad and have since spread nationwide in several other provinces.[[5]](#footnote-5)

1. **The rise of internet shutdowns worldwide**

Access Now recommends that the Committee explicitly acknowledge internet shutdowns and the increase of internet shutdowns worldwide in the Draft General Comment and delete the word “unduly” in the text, “unduly blocking Internet connectivity” (at §38). Internet shutdowns, sometimes called “network interference,” “kill switches,” or “blackouts,” entail the blocking or throttling of internet access, and voice and data traffic, to the extent that networks become inaccessible or effectively unusable. Internet shutdowns are often carried out by telecommunication companies in response to government demands.

Blocking internet access, or social media apps, interferes with the right to freedom of expression by denying persons the right to seek, receive and impart information. Shutdowns frequently occur during periods of civil unrest, directly impacting the right to freedom of peaceful assembly.

Since 2011, Access Now has been identifying, documenting, and verifying internet shutdowns around the world. In 2016, we launched the Shutdown Tracker Optimization Project (STOP) to systematically collect, document, and verify internet shutdowns in close collaboration with affected communities.[[6]](#footnote-6) Our process was also influenced and guided by the more than 210 organizations from nearly 100 countries in the #KeepItOn Coalition, who helped develop and refine our methodology.[[7]](#footnote-7) According to our STOP tracker, 213 shutdowns were reported in 2019, 196 in 2018, 108 in 2017 and 75 in 2016.[[8]](#footnote-8)

**2. Adopting and strengthening the Committee’s language from General Comment No. 34 freedoms of opinion and expression**

1. **Acknowledging the context of emerging ICTs**

Access Now recommends that the Committee adopt language similar to §15 of the Committee’s General Comment No. 34 into the Draft General Comment. §15 states: “States parties should take account of the extent to which developments in [ICTs], such as internet and mobile based electronic information dissemination systems, have substantially changed communication practices around the world. There is now a global network for exchanging ideas and opinions that does not necessarily rely on the traditional mass media intermediaries. States parties should take all necessary steps to foster the independence of these new media and to ensure access of individuals thereto.”[[9]](#footnote-9)

The Draft General Comment makes reference to “emerging technologies” as presenting new spaces and opportunities to exercise the right of peaceful assembly (at §11). Access Now suggests building on this current paragraph by borrowing language from §15 of the Committee’s General Comment No.34. We maintain that this language is vital to ensure the continued relevance of the General Comment to the context and extent in which developments in ICTs change worldwide.

1. **Restrictions on the right of peaceful assembly and other interrelated rights**

The Committee should supplement and strengthen the language contained in §43 of the Committee’s General Comment No. 34 on freedoms of opinion and expression with more recent declarations from international experts regarding state restrictions on certain human rights **into §38 of the Draft General Comment**. In §38 of the Draft General Comment, the last sentence states that “any restrictions on the operation of information dissemination systems must conform with the tests for restrictions on freedom of expression” therefore referring to General Comment No.34 (and notably §43 with regards to digital rights).

§43 states: “Any restrictions on the operation of website, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, are only permissible to the extent that they are compatible with paragraph 3. Permissible restrictions generally **should be content-specific;** generic bans on the operation of certain sites and systems are **not compatible with paragraph 3.** It is also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.”[[10]](#footnote-10)

The Committee’s General Comment No. 34 was adopted in 2011. Since then, the frequency of internet shutdowns has drastically risen, calling more attention from human rights experts. Indeed, international experts have denounced government restrictions on internet-shutdowns. For instance, governments often give national security, public safety, “fake news” (more accurately termed, disinformation), and hate speech as the main justifications for shutting down the internet. However, in reality, the actual cause that triggered the shutdown is usually not the same as the governments’ given justification.[[11]](#footnote-11) Internet shutdowns essentially allow government officials to stifle the flow of information about government wrongdoing or to stop communication among those assembling “by ordering service providers to cut or slow down their customers’ internet access.”[[12]](#footnote-12) For instance, following protests related to racism towards the Papuan people, the Indonesian government imposed an internet shutdown in Papua and West Papua on 21 August 2019.[[13]](#footnote-13) According to the Institute for Policy Research and Advocacy (ESLAM), “the actions taken by the Indonesian government [are considered] a form of digital repression that contravenes the public emergency principle, considering that the Indonesian government is imposing the internet shutdown under the pretext of public emergency.”[[14]](#footnote-14)

In 2015, international experts – at the United Nations, the Organization for Security and Co-operation in Europe (OSCE), Organization of American States (OAS), and the African Commission on Human and Peoples’ Rights (ACHPR) – declared that internet shutdowns can **never**be justified under international human rights law, even in times of conflict.[[15]](#footnote-15) These experts maintain that governments cannot order telecommunications companies to shut off mobile or internet services in the face of social unrest or protest.[[16]](#footnote-16) Under section 4(c) the statement explains: “filtering of content on the Internet, using communications ‘kill switches’ (*i.e.* shutting down entire parts of communications systems) and the physical takeover of broadcasting stations are measures which can never be justified under human rights law.”[[17]](#footnote-17) have declared that the “filtering of content on the Internet, using communications ‘kill switches’ (i.e. shutting down entire parts of communications systems) and the physical takeover of broadcasting stations are measures which can **never** be justified under human rights law.”[[18]](#footnote-18) Therefore, Access Now recommends replacing the last sentence contained in §38 of the Draft General Comment with explicit reference to the blanket prohibition on internet shutdowns. Specifically we recommend the following language: “filtering of content on the Internet, internet shutdowns, and the physical takeover of broadcasting stations are measures which can never be justified under human rights law.”

**3. The right to privacy and surveillance technology and its connection to the right to peaceful assembly**

Access Now welcomes the Committee’s notable references to the use of surveillance technology, including facial recognition technology, in the context of peaceful protests (at §11, §70, §71, and §112 of the Draft General Comment). New technologies, including ICTs, can also pose human rights challenges in the context of assemblies, including peaceful protests through the use of surveillance and monitoring tools by authorities, including biometrics-based recognition technology to identify protestors. The Committee rightfully notes the collection of “personal information and data of those engaged in peaceful protests [...] must strictly conform to the applicable international standards, including the right to privacy” (at §71, §72, and §112). Access Now recommends that the Committee strengthen this language with explicit reference to the collection and misuse of **biometric** data.

Surveillance, particularly mass surveillance, during peaceful assemblies demonstrates the intrinsic relationship between freedom of assembly and the right to privacy.[[19]](#footnote-19) Then UN High Commissioner for Human Rights, Navi Pillay, revealed “a ‘disturbing’ lack of transparency about government surveillance policies and practices, ‘including de facto coercion of private sector companies to provide sweeping access to information and data relating to private individuals without the latter’s knowledge or consent.’”[[20]](#footnote-20)

1. **Surveillance and the attack on civic space creates a chilling effect**

The Committee should, where applicable, link the use of surveillance technology to the closing of online civic space and the overall chilling effect imposed. The closing of online civic space has impacted the right to protest, as previously decentralized and open platforms and tools have become restricted, with individuals and communities subject to censorship, harassment, surveillance, and persecution that deter the use of ICTs as tools of protest. This worrisome trend against digital rights in the context of peaceful protests appears in the recent Hong Kong protests, where protesters “are keeping a low profile on social media, communicating only via secure messaging apps, deleting conversations related to the protests and using pre-paid SIM cards not linked to their personal information. … [They are also] **wearing face masks** in case photos are used to identify them and declining to give out their phone numbers or contacts to reporters.”[[21]](#footnote-21) These protesters are reverting to these techniques as a result of fears over reprisals by authorities who may identify them through facial recognition and surveillance technologies.[[22]](#footnote-22) Indeed, the Draft General Comment includes reference “wearing of face coverings or other disguises by assembly participants” (at §70). Access Now encourages the Committee to note the link between the adoption of techniques by protestors that avoid online platforms or ICTs as an indication of the closing of online civic space. This well-founded lack of trust in authorities means those assembling will not reap the full benefits of these technologies, thereby showing interference with the right to peaceful assembly in the digital age.

Civil society is under attack around the world, both online and off. The Internet Society (ISOC) has recently announced its plans to sell Public Interest Registry (PIR) and with it control of .ORG -- to a private venture capital firm, Ethos Capital.[[23]](#footnote-23) UN Special Rapporteurs on the right to freedoms of opinion and expression, David Kaye, and the right to freedom of assembly and association, Clement Voule, have expressed concern over the proposed deal. According to Voule and Kaye, “the proposed deal raises serious questions about the ability of civil society organizations and other public interest-minded individuals and entities to continue to enjoy the space for the exercise of the rights to freedom of expression and association offered by the .ORG domain managed by the PIR.”[[24]](#footnote-24) The Draft General Comment notes the “the increased privatization of public spaces' ' (at §70). We maintain that the sale of .ORG echoes the concern captured in the Draft General Comment that private owners “may have to be limited if the participants [in this case civil society organizations] have no other reasonable way to convey their message to their target audience.” Therefore, Access Now suggests that the Committee cite Voule and Kaye’s letter as an example where the privatization of an online public domain threatens civil society’s ability to convey their message. Further, organizations like Access Now host online assemblies via our .ORG websites; the proposed sale threatens these affordable and open gathering places online. The Special Rapporteurs’ letter provides explicit reference to international legal principles and norms regarding the responsibility of business enterprises.

Surveillance technologies have the potential to violate the privacy and other human rights of millions of individuals and communities. These human rights are violated, especially if there are not adequate control mechanisms for the acquisition and use of surveillance technologies and remedies for their abuse.[[25]](#footnote-25) From facial recognition technologies to the interception of mobile devices, protesters’ right to privacy and anonymity is increasingly infringed. For instance, “facial recognition technologies in public spaces can be abused very easily to violate the people’s fundamental privacy rights, in ways that are very difficult to remedy.”[[26]](#footnote-26) Without proper safeguards in place, public surveillance tools can be used to track people’s movements in a way that can inhibit the labor right to strike, free association, free expression and enjoyment of public space in sporting and cultural events, among others.

**General Remarks**

**3. Human rights challenges posed by the use of new technologies in the context of assemblies**

Access Now recommends that the Committee include explicit references to “social media hacking” and “attacks on encryption and anonymity” in the context of the right to peaceful assembly. New technologies, including ICTs, can also pose human rights challenges in the context of assemblies, including peaceful protests through the use of surveillance and monitoring tools by authorities.

1. **Social Media Hacking**

Access Now recommends that the Committee replace the phrase “monitoring of social media to glean information about participation in peaceful assemblies” at §72 with “monitoring **or hacking (including, but not limited to, malware-based phishing attacks and** **doxxing)** social media to **gather, alter, or otherwise interfere with** information about participation in peaceful assemblies**, and disrupt online assemblies**.” Hacking is difficult to define because of the broad scope of activities it covers and could potentially cover in the future. In addition to malware-based phishing attacks, there are many other examples of attacks designed to hack protester’s – particularly protest organizers’ – social media accounts. In such attacks, accounts are created to impersonate protest organizers to spread false information, or endanger those who follow them. For instance, last year our Digital Security Helpline received reports of social engineering attacks in Vietnam. These attacks targeted the Facebook profiles of bloggers and citizen journalists writing about democracy and human rights.[[27]](#footnote-27)

Our Digital Security Helpline has also found instances of doxxing – maliciously publishing one’s personal information, such as a phone number or addresses – to encourage physical harm to protesters and community organizers.[[28]](#footnote-28) Recently, in Nicaragua there was an increase in threats to Nicaraguan activists’ social media accounts, including phishing attacks aimed at obtaining the password or two-factor authentication code to accounts belonging to journalists, organizers and other community voices.[[29]](#footnote-29) Local organizations estimate that 450 people have been killed, 600 disappeared and tortured, and 2,800 injured due to police violence and attacks by paramilitary groups since protests began in April 2018.[[30]](#footnote-30)

1. **Attacks on Encryption and Anonymity**

##### Threats and reprisals against those who exercise their rights to peaceful assembly in the digital realm often occur online or through the use and abuse of ICTs. In order to protect themselves and their communities from reprisal, organizers often depend on encrypted communications tools and workflows that protect their identities. According to UN Special Rapporteur on the promotion and protection of the right to freedoms of opinion and expression, David Kaye, “anonymous speech has been necessary for activities and protestors, but States have regularly attempted to ban or intercept anonymous communications in times of protest. Such attempts to interfere with freedom of expression unlawfully pursue an illegitimate objective of undermining the right to peaceful protest under the Universal Declaration and the International Covenant on Civil and Political Rights.”[[31]](#footnote-31)

**Conclusion**

Access Now is grateful to provide comment on the UN Human Rights Committee’s Revised Draft General Comment No. 37 on Article 21 (Right of Peaceful Assembly) of the International Covenant on Civil and Political Rights. We welcome any future opportunities to engage with the Committee on this and other related topics. For more information contact: **Peter Micek,** General Counsel and UN Policy Manager, at

[peter@accessnow.org](mailto:peter@accessnow.org) and **Laura O’Brien,** UN Advocacy Officer, at [laura@accessnow.org](mailto:laura@accessnow.org)

**Appendix**

**Resolutions & Governmental Statements Relevant to #KeepItOn**

*An ongoing list of resolutions, statements, and prominent communications by Governments or Intergovernmental bodies regarding internet shutdowns and related disruptions. Last updated Nov 2019.*

[Intergovernmental and National Resolutions](#_c6qvvhf6z5qb)

[2019](#_rul3jtf53lfg)

[[passed by full House] USA, “H.Res.358 - Calling on the Government of Cameroon…”](https://docs.google.com/document/d/19PNWzm13rAGXu9LTACLcUOA42zwrepYyIvr2Yp2FK74/edit#heading=h.e4cywr8a7oa7)

[[proposed] Nigeria, “Digital Rights and Freedom Bill”](#_e5qvfv4u8bz1)

[European Parliament, “Resolution of 17 January 2019 on Sudan (2019/2512(RSP))”](#_ib2yt7ba6csw)

[2018](#_lsuz123s4xwa)

[UN Human Rights Council, “Internet Resolution,” adopted by consensus A/HRC/RES/38/7](#_a87qqgmut1j)

[UN Human Rights Council, “The promotion and protection of human rights in the context of peaceful protests”, adopted by consensus](#_tsor4gb1aiwi)

[UN General Assembly, “Promotion and protection of human rights and fundamental freedoms, including the rights to peaceful assembly and freedom of association,” adopted by vote](#_wkzsloae8kr4)

[2017](#_11qxv2ce4q9m)

[UN General Assembly, adopted by consensus, “The safety of journalists and the issue of impunity,”](#_6c0kmqqol6xk)

[The Freedom Online Coalition, “Joint Statement on State Sponsored Network Disruptions”](#_6zul3u7i3lj)

[2016](#_aplh9bcovc0o)

[African Commission, 59th Ordinary Session, 362: Resolution on the Right to Freedom of Information and Expression on the Internet in Africa](#_qx2e228bgmf1)

[UN Human Rights Council, on the promotion, protection, and enjoyment of human rights on the internet, adopted by consensus](#_wxymm72eyjsz)

[Special Rapporteur statements & reports](#_3e2peo1p7zte)

[2019](#_kv2j5em20lhb)

[Mr. Aristide Nononsi, Independent Expert on the human rights situation in Sudan; Mr. Clement Nyaletsossi Voule, Special Rapporteur on the right to peaceful assembly and association; Mr. David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#_wmur5ilzld2i)

[High Commissioner for Human Rights Michelle Bachelet:](#_rdvloug8i97x)

[High Commissioner for Human Rights Michelle Bachelet:](#_fba0uxewdig9)

[Special Rapporteur on Freedom of Peaceful Assembly and of Association, Clément Nyaletsossi Voule, “challenges facing the rights to freedom of peaceful assembly and of association in the digital age”](#_r83qn6yadd5y)

[2016](#_g2scglredvkq)

[Special Rapporteur on Freedom of Expression, David Kaye, “Report on Freedom of Expression and the Internet and Telecommunications Access Industry”](#_39k2a8fghedp)

[Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (A/HRC/31/66)](#_motrqdsfrq97)

[2015](#_qny9bmvmcuq1)

[OSCE, Joint Declaration on Freedom of Expression and Responses to Conflict Situations](#_kfcow3v6ezi8)

[2011](#_kbmdwixix4q8)

[Joint Declaration on Freedom of Expression and the Internet](#_lw2mekqumvmg)

[Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue (A/HRC/17/27)](#_i86ohqiehf1y)

---

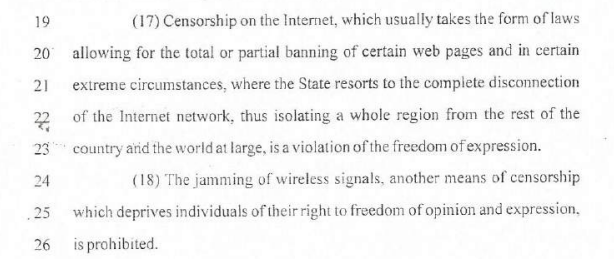
## Intergovernmental and National Resolutions

## 2019

The resolution was accepted and passed the House Foreign Relations Committee as introduced. We expect that it will go to the floor sometime this month. Track its progress [here](https://www.congress.gov/bill/116th-congress/house-resolution/358/all-actions?q=%7B%22search%22%3A%22cameroon%22%7D).

### [proposed] Nigeria, “Digital Rights and Freedom Bill[[32]](#footnote-32)”

The bill Passed through both houses of congress; however, the President declined to sign the bill, so it failed in March 2019.



### European Parliament, “Resolution of 17 January 2019 on Sudan (2019/2512(RSP))”

<https://www.dabangasudan.org/uploads/media/5c42207b3d6a7.pdf>

10. Calls for an immediate end to restrictions imposed on access to the internet and the curtailing of freedom of expression through the censorship of newspapers, and urges Sudan to undertake reforms to guarantee freedom of expression, in accordance with its constitutional obligations and international commitments, including the Cotonou Agreement as first amended in Luxembourg on 25 June 2005;

## 2018

### UN Human Rights Council, “Internet Resolution,” adopted by consensus [A/HRC/RES/38/7](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/38/7)

PP: *Deeply concerned also* at measures in violation of international human rights law that aim to or that intentionally prevent or disrupt access to or dissemination of information online,

and

OP: *Condemns unequivocally* measures in violation of international human rights law that prevent or disrupt an individual’s ability to seek, receive or impart information online, calls upon all States to refrain from and cease such measures, and also calls upon States to ensure that all domestic laws, policies and practices are consistent with their international human rights obligations with regard to freedom of opinion and expression online.[[33]](#footnote-33)

### UN Human Rights Council, “The promotion and protection of human rights in the context of peaceful protests”, adopted by consensus

[A/HRC/RES/38/11](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/38/11)

PP: *Concerned about* the emerging trend of disinformation and of undue restrictions preventing Internet users from having access to or disseminating information at key political moments, with an impact on the ability to organize and conduct assemblies,”

and

OP: *Calls upon* all States to refrain from and cease measures, when in violation of international human rights law, seeking to block Internet users from gaining access to or disseminating information online.[[34]](#footnote-34)

### UN General Assembly, “Promotion and protection of human rights and fundamental freedoms, including the rights to peaceful assembly and freedom of association,” adopted by [vote](https://www.un.org/press/en/2018/ga12107.doc.htm)

Vote was 154 in favour to none against, with 35 abstentions),   
[A/RES/73/173](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/173)

OP: 4. *Calls upon* all States to ensure that the same rights that individuals have offline, including the rights to freedom of expression, of peaceful assembly and of association, are also fully protected online, in accordance with human rights law, particularly by refraining from Internet shutdowns and content restrictions on the Internet that violate international human rights law, by ending attacks by States and taking steps to end attacks by non-State actors against journalists and other media workers covering demonstrations and protests and by ending government shutdowns of media outlets for attempting to report on such protests…

## 2017

### UN General Assembly, adopted by consensus, “The safety of journalists and the issue of impunity,”

[A/RES/72/175](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/72/175)

OP: *Condemns unequivocally* measures in violation of international human rights law aiming to or that intentionally prevent or disrupt access to or dissemination of information online and offline, aiming to undermine the work of journalists in informing the public, and calls upon all States to cease and refrain from these measures, which cause irreparable harm to efforts at building inclusive and peaceful knowledge societies and democracies.[[35]](#footnote-35)

### The Freedom Online Coalition, “Joint Statement on State Sponsored Network Disruptions”

<https://www.freedomonlinecoalition.com/wp-content/uploads/2017/03/FOCJointStatementonStateSponsoredNetworkDisruptions.docx.pdf>

The Freedom Online Coalition (FOC) expresses deep concern over the growing trend of intentional state-sponsored disruptions of access to or dissemination of information online. Measures intended to render Internet and mobile network services inaccessible or effectively unusable for a specific population or location and which stifle exercise of the freedoms of expression, association, and peaceful assembly online undermine the many benefits of the use of the internet and ICTs. In doing so, such disruptions challenge the FOC’s goal of protecting and extending an open and interoperable Internet, as affirmed in the Tallinn Agenda…

## 2016

### African Commission, 59th Ordinary Session, 362: Resolution on the Right to Freedom of Information and Expression on the Internet in Africa

[ACHPR/Res. 362(LIX) 2016](http://www.achpr.org/sessions/59th/resolutions/362/)

*Concerned by* the emerging practice of State Parties of interrupting or limiting access to telecommunication services such as the Internet, social media and messaging services, increasingly during elections;

### UN Human Rights Council, on the promotion, protection, and enjoyment of human rights on the internet[[36]](#footnote-36), adopted by consensus

PP: *Deeply concerned also* by measures aiming to or that intentionally prevent or disrupt access to or dissemination of information online, in violation of international human rights law,

and

OP: *Condemns unequivocally* measures to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law and calls on all States to refrain from and cease such measures.[[37]](#footnote-37)

# Special Rapporteur statements & reports

## 2019

### Mr. Aristide Nononsi, Independent Expert on the human rights situation in Sudan; Mr. Clement Nyaletsossi Voule, Special Rapporteur on the right to peaceful assembly and association; Mr. David Kaye, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

“Sudan: UN experts denounce Internet shutdown, call for immediate restoration”

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24803&LangID=E>

### High Commissioner for Human Rights Michelle Bachelet:

“Bachelet urges Sudan to restore freedoms, investigate violations and move swiftly to civilian rule”

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24785&LangID=E>

### High Commissioner for Human Rights Michelle Bachelet:

Opening Remarks to HRC41

--includes a call for Sudan to end internet shutdown

<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24724&LangID=E>

### Special Rapporteur on Freedom of Peaceful Assembly and of Association, Clément Nyaletsossi Voule, “challenges facing the rights to freedom of peaceful assembly and of association in the digital age”

<https://www.ohchr.org/Documents/Issues/FAssociation/A_HRC_41_41_EN.docx>

*Below are pulled quotes from pages 11-12 of SR on FoAA’s* [*report*](https://www.ohchr.org/Documents/Issues/FAssociation/A_HRC_41_41_EN.docx) *on rights in the digital age -- Internet disruptions & Shutdowns, and High Commissioner for Human Rights Michelle Bachelet’s Opening statement at the 41st session of the HRC.*

1. *A GROWING PROBLEM:* “at least 40 network disruptions were identified in connection with public demonstrations and peaceful protests in 2018, with 37 in 2017 and 27 in 2016.” (SR on FoAA, 11)
   1. Ongoing shutdown crises in Sudan, Ethiopia, Myanmar
      1. At the 41st session of the Human Rights Council, the Opening statement by UN High Commissioner for Human Rights Michelle Bachelet included:
      2. “I urge Sudan to grant access to my Office; to put an end to the repression of the people's human rights; and to immediately end the Internet shutdown. The Sudanese people are entitled to express their opinions, and – like people everywhere – they have a right to live in freedom and at peace, enjoying the rule of law and the conditions necessary to dignity.” (Bachelet)
   2. The regions most affected [by shutdowns/disruptions] are Asia and Africa, with cases of Internet shutdowns or social media bans reported in India, the Islamic Republic of Iran, Chad, Cameroon and Togo” (SR on FoAA, 12)
   3. “The number of network disruptions and social media bans during elections has also been on the rise since 2016, severely affecting political opposition parties’ and social movements’ visibility and capacity to mobilize support at a crucial time.”
   4. “These measures affect the capacity of human rights defenders to carry out their work and document human rights abuses.”
2. *LEGALITY:* “The Special Rapporteur believes network shutdowns are in clear violation of international law and cannot be justified in any circumstances. Shutdowns fail to meet the established test for restrictions on the right to peaceful assembly found in article 21, and for restrictions on the right to freedom of association under article 22 (2), of the Covenant.”
   1. “In most cases, network shutdown orders lack a legal basis.”
      1. “Where a legal basis does exist, shutdown orders are often coupled with broad and vague provisions and lack adequate independent oversight”
         1. “While these measures are typically justified on grounds of national security and public order, they are a disproportionate – and generally ineffective”
3. *HARMS: “*These extreme measures generate a wide variety of harms to human rights, economic activity, public safety and emergency services that outweigh the purported benefits.”
   1. “Network disruptions often backfire and cause chaos and unrest. “
      1. In the context of protests and elections, when tensions are at their highest, these tools are actually needed to prevent disinformation and dispel rumours, as well as to protect the rights to liberty and personal integrity, by allowing access to emergency help and contact with family and friends.”
   2. “The Human Rights Council has unequivocally expressed its concern “at measures in violation of international human rights law that aim to or that intentionally prevent or disrupt access to or dissemination of information online”.”

## 2016

### Special Rapporteur on Freedom of Expression, David Kaye, “Report on Freedom of Expression and the Internet and Telecommunications Access Industry”

<https://freedex.org/report-on-freedom-of-expression-and-the-internet-and-telecommunications-access-industry/>

See section A “Internet and Telecommunications Shutdowns” on page 4-onwards.

### Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (A/HRC/31/66)

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx>

75. The capacity to use communication technologies securely and privately is vital to the organization and conduct of assemblies. Restrictions to online access or expression must be necessary and proportionate and applied by a body independent of any political, commercial or other unwarranted influences, and there should be adequate safeguards against abuse (see A/HRC/17/27, para. 69). The practice of blocking communications — impeding the organization or publicizing of an assembly online — rarely satisfies these requirements (ibid., para. 31).

## 2015

### OSCE, Joint Declaration on Freedom of Expression and Responses to Conflict Situations

<http://www.osce.org/fom/154846>

4(c) Filtering of content on the Internet, using communications ‘kill switches’ (i.e. shutting down entire parts of communications systems) and the physical takeover of broadcasting stations are measures which can never be justified under human rights law.

## 2011

### Joint Declaration on Freedom of Expression and the Internet

<http://www.oas.org/en/iachr/expression/showarticle.asp?artID=848>

6(b) Cutting off access to the Internet, or parts of the Internet, for whole populations or segments of the public (shutting down the Internet) can never be justified, including on public order or national security grounds. The same applies to slow-downs imposed on the Internet or parts of the Internet.

### Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue (A/HRC/17/27)

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf>

30. The Special Rapporteur is also concerned by the emerging trend of timed (or “just in-time”) blocking to prevent users from accessing or disseminating information at key political moments, such as elections, times of social unrest, or anniversaries of politically or historically significant events. During such times, websites of opposition parties, independent media, and social networking platforms such as Twitter and Facebook are blocked, as witnessed in the context of recent protests across the Middle East and North African region. In Egypt, users were disconnected entirely from Internet access.

31. States’ use of blocking or filtering technologies is frequently in violation of their obligation to guarantee the right to freedom of expression, as the criteria mentioned under chapter III are not met. Firstly, the specific conditions that justify blocking are not established in law, or are provided by law but in an overly broad and vague manner, which risks content being blocked arbitrarily and excessively. Secondly, blocking is not justified to pursue aims which are listed under article 19, paragraph 3, of the International Covenant on Civil and Political Rights, and blocking lists are generally kept secret, which makes it difficult to assess whether access to content is being restricted for a legitimate purpose. Thirdly, even where justification is provided, blocking measures constitute an unnecessary or disproportionate means to achieve the purported aim, as they are often not sufficiently targeted and render a wide range of content inaccessible beyond that which has been deemed illegal. Lastly, content is frequently blocked without the intervention of or possibility for review by a judicial or independent body.

1. OHCHR, [Revised Draft General Comment No. 37 on Article 21 (Right of Peaceful Assembly) of the ICCPR](https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GCArticle21.aspx), United Nations Human Rights Committee (2019-2020). [↑](#footnote-ref-1)
2. Access Now, [About](https://www.accessnow.org/), (2020). [↑](#footnote-ref-2)
3. *See* Access Now, [“#KeepitOn: Mobile carriers boost internet for U.S. inauguration events and demonstrations,”](https://www.accessnow.org/keepiton-mobile-carriers-boost-internet-u-s-inauguration-events-demonstrations/) 5 January 2017. [↑](#footnote-ref-3)
4. UN Human Rights Council, *The promotion, protection and enjoyment of human rights on the Internet*, UN Doc. A/HRC/38/L.10/Rev.1, 4 July 2018. [↑](#footnote-ref-4)
5. Aljazeera, [Several killed as Iraq protests escalate, spread nationwide](https://www.aljazeera.com/news/2019/10/iraqi-police-open-fire-day-protests-hit-baghdad-191002120630933.html), 2 October 2019. [↑](#footnote-ref-5)
6. Access Now, [#KeepItOn](https://www.accessnow.org/keepiton/), 2019; See also Access Now, [Fighting Internet Shutdowns Around the World #KeepItOn](https://www.accessnow.org/cms/assets/uploads/2018/06/KeepItOn-Digital-Pamphlet.pdf) [↑](#footnote-ref-6)
7. See for example SFLC.in, [Internet Shutdowns](https://internetshutdowns.in/), 2019; [Moses Karanja,](https://moseskaranja.com/writing/Infocontrols/) 2019; [CIPESA](https://cipesa.org/), 2019. [↑](#footnote-ref-7)
8. Access Now, [#KeepItOn](https://www.accessnow.org/keepiton/), 2019 [\*NB: Access Now’s 2019 KeepItOn Report will be launched around March 2020]. [↑](#footnote-ref-8)
9. UN Human Rights Committee, [General Comment No. 34 Article 19: freedoms of opinion and expression](https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf), UN Doc. CCPR/C/GC/34, 12 September 2011. [↑](#footnote-ref-9)
10. UN Human Rights Committee, [General Comment No. 34 Article 19: freedoms of opinion and expression](https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf), UN Doc. CCPR/C/GC/34, 12 September 2011. [↑](#footnote-ref-10)
11. Access Now,[The State of Internet Shutdowns](https://www.accessnow.org/the-state-of-internet-shutdowns-in-2018/), 8 July 2019. [↑](#footnote-ref-11)
12. Patrick Kingsley, [Life in the Internet Shutdown: Cross Borders for Email and Contraband SIM Cards](https://www.nytimes.com/2019/09/02/world/africa/internet-shutdown-economy.html), *The New York Times*, 2 September 2019. [↑](#footnote-ref-12)
13. ESLAM, [Internet Shutdown in Papua: A Digital Form of Repression that Contravenes the Principle of Emergency Situation](https://elsam.or.id/internet-shutdown-in-papua-a-digital-form-of-repression-that-contravenes-the-principle-of-emergency-situation-2/), 22 August 2019. [↑](#footnote-ref-13)
14. ESLAM, [Internet Shutdown in Papua: A Digital Form of Repression that Contravenes the Principle of Emergency Situation](https://elsam.or.id/internet-shutdown-in-papua-a-digital-form-of-repression-that-contravenes-the-principle-of-emergency-situation-2/), 22 August 2019. [↑](#footnote-ref-14)
15. [Joint Declaration On Freedom Of Expression And Responses To Conflict Situations](https://www.osce.org/fom/154846?download=true) [↑](#footnote-ref-15)
16. Access Now, [Zimbabwe orders a three-day, country-wide internet shutdown](https://www.accessnow.org/zimbabwe-orders-a-three-day-country-wide-internet-shutdown/), 15 January 2019. [↑](#footnote-ref-16)
17. OHCHR, [Joint Declaration on Freedom of Expression and responses to conflict situations](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15921&LangID=E). [↑](#footnote-ref-17)
18. OSCE, *Joint Declaration on Freedom of Expression and Responses to Conflict Situations*, available online at: <https://www.osce.org/fom/154846?download=true> 2015. [↑](#footnote-ref-18)
19. David Green, [Deep Dive into First Unitarian Church v NSA: Why Freedom of Association Matters](https://www.eff.org/deeplinks/2014/01/deep-dive-first-unitarian-church-v-nsa-why-freedom-association-matters), 27 January 2014. [↑](#footnote-ref-19)
20. OHCHR, [Dangerous practice of digital mass surveillance must be subject to independent checks and balances](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14875), 16 July 2014. [↑](#footnote-ref-20)
21. Lily Kuo, [Hong Kong’s digital battle: tech that helped protestors now used against them](https://www.theguardian.com/world/2019/jun/14/hong-kongs-digital-battle-technology-that-helped-protesters-now-used-against-them), *The Guardian*, 14 June 2019. [↑](#footnote-ref-21)
22. Rosalind Adams, [Hong Kong Protesters are Worried About Facial Recognition Technology. But There Are Many Other Ways They're Being Watched](https://www.buzzfeednews.com/article/rosalindadams/hong-kong-protests-paranoia-facial-recognition-lasers), BuzzFeed News,17 August 2019. [↑](#footnote-ref-22)
23. Access Now, [Civil society's online home - .ORG - is for sale](https://www.accessnow.org/civil-societys-online-home-org-is-for-sale/), 5 December 2019. [↑](#footnote-ref-23)
24. Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association, [Letter to Mr. Marby ICANN](https://freedex.org/wp-content/blogs.dir/2015/files/2019/12/OL-OTH-20.12.19-60.2019-ICANN.pdf), 20 December 2019. [↑](#footnote-ref-24)
25. Access Now, [Argentina province in talks with Huawei over acquiring facial recognition surveillance technology](https://www.accessnow.org/mendoza-surveillance-tech/) 12 July 2018. [↑](#footnote-ref-25)
26. Access Now, [Argentina province in talks with Huawei over acquiring facial recognition surveillance technology](https://www.accessnow.org/mendoza-surveillance-tech/) 12 July 2018. [↑](#footnote-ref-26)
27. Access Now, [New Facebook phishing attack taking Vietnamese opposition voices online](https://www.accessnow.org/vietnam-facebook-phishing-attack-take-opposition-voices-offline/), 22 October 2018. [↑](#footnote-ref-27)
28. Access Now, [New wave of online attacks in Nicaragua puts opposition voices at risk of physical violence](https://www.accessnow.org/new-wave-of-online-attacks-in-nicaragua-puts-opposition-voices-at-risk-of-physical-violence/), 13 September 2018. [↑](#footnote-ref-28)
29. Access Now, [New wave of online attacks in Nicaragua puts opposition voices at risk of physical violence](https://www.accessnow.org/new-wave-of-online-attacks-in-nicaragua-puts-opposition-voices-at-risk-of-physical-violence/), 13 September 2018. [↑](#footnote-ref-29)
30. Joshua Partlow, ['They took my humanity': Pro-government paramilitaries terrorize Nicaraguan protesters](https://www.washingtonpost.com/world/the_americas/they-took-my-humanity-pro-government-paramilitaries-terrorize-nicaraguan-protesters/2018/08/02/349f8914-900a-11e8-ae59-01880eac5f1d_story.html), *The Washington Post*, 2 August 2018; Access Now, [New wave of online attacks in Nicaragua puts opposition voices at risk of physical violence](https://www.accessnow.org/new-wave-of-online-attacks-in-nicaragua-puts-opposition-voices-at-risk-of-physical-violence/), 13 September 2018. [↑](#footnote-ref-30)
31. UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, [Report on encryption and anonymity](https://undocs.org/en/A/HRC/29/32), UN Doc. A/HRC/29/32, 22 May 2015 at para 53; UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, [Encryption and Anonymity follow-up report,](https://www.ohchr.org/Documents/Issues/Opinion/EncryptionAnonymityFollowUpReport.pdf) June 2018. [↑](#footnote-ref-31)
32. http://eie.ng/wp-content/uploads/2016/06/Digital-Rights-and-Freedom-Bill-2016.pdf [↑](#footnote-ref-32)
33. UN Human Rights Council, *The promotion, protection and enjoyment of human rights on the Internet*, UN Doc. A/HRC/RES/38/7 (2018). [↑](#footnote-ref-33)
34. UN Human Rights Council, *The promotion and protection of human rights in the context of peaceful protests*, UN Doc. A/HRC/RES/38/11, a*vailable at* https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session38/Pages/ResDecStat.aspx. [↑](#footnote-ref-34)
35. UN General Assembly, *The safety of journalists and the issue of impunity*, UN Doc. A/C.3/72/L.35/Rev.1 (2017). [↑](#footnote-ref-35)
36. UN Human Rights Council, [*The promotion, protection and enjoyment of human rights on the Internet*](https://undocs.org/A/HRC/32/L.20), UN Doc. A/HRC/32/L.20 (2016). [↑](#footnote-ref-36)
37. *Id*., par. 10. [↑](#footnote-ref-37)